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## Workers' Compensation Information for Contractors and Subcontractors

### Virginia Coverage Requirements

Virginia law requires that an employer who regularly employs more than two part-time or full-time employees carry workers' compensation. If a business hires subcontractors to perform the same trade, business or occupation, or to fulfill a contract of the business, the subcontractors' employees are included in determining the total number of employees.

Employee is broadly defined in workers' compensation. A corporate officer is an employee. "Employee" also includes part-time, full-time and seasonal workers, minors, aliens and working family members.

### Contractor Liability

The legal requirement that a contractor bears potential workers' compensation liability for a subcontractor's employees is from the Statutory Employer law, § 65.2-302. This requirement applies to subcontractors that perform the same trade, business or occupation as the contractor or to fulfill a contract obligation of the contractor. Example: A homebuilding contractor that subcontracts the house electrical must count the employees of the electrical subcontractor because a house requires electrical.

A simple mathematical guide for determining whether a contractor is required to have coverage is for the contractor to add the **sum total** of the contractor's employees plus all of the subcontractors' employees. If the contractor has one employee and hires two subcontractors, with one employee each, the math would look like this:

Contractor's employee + Subcontractor A with 1 employee + Subcontractor B with 1 employee

$$1 + 1 + 1 = 3 \text{ employees}$$

The contractor above would be required to have coverage. A contractor with three or more total statutory employees is required to have coverage even if one or all subcontractors have their own coverage. The contractor should gather and maintain proof of coverage for all subcontractors it hires and it should not be charged premium for those that have coverage. A policy is required nonetheless.

### Voluntary Coverage

Since a potential statutory employer relationship exists for any job done through subcontractors, some contractors require that all subcontractors or independent contractors they work with carry their own coverage, even sole proprietors or others that are not required by law to carry coverage. This is because the contractor can be charged additional insurance premium if the subcontractor's coverage is not present. Coverage be purchased by a business voluntarily, even when it is not required by law.